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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE CHEMOURS COMPANY, Plaintiff, v. DOWDUPONT INC.; CORTEVA, INC.; AND E. I. DU PONT DE NEMOURS AND COMPANY, Defendants.	)	C.A. No. **FILED UNDER SEAL**

VERIFIED COMPLAINT

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Plaintiff The Chemours Company ("Chemours"), by and through its undersigned counsel, as and for its complaint against the Defendants named herein, alleges on personal knowledge as to itself and its own conduct, and on information and belief as to all other matters, as follows:

INTRODUCTION

1. E. I. du Pont de Nemours and Company ("DuPont") has manufactured industrial chemicals since 1802. In 2015, DuPont orchestrated a spin-off of its Performance Chemicals unit into a new company it named Chemours, as part of a plan to try to off-load its historical environmental liabilities. When DuPont did so, its board made the determination — required by Delaware statutory and common law — that the spin-off was appropriate and that Chemours was solvent and viable

at the time. DuPont's board made that determination on the basis of "High End (Maximum) Realistic Exposure" numbers DuPont certified for each of the host of contingent liabilities it was dumping on Chemours.

2. It has since become clear that DuPont's supposedly "maximum" numbers were systematically and spectacularly wrong. Yet DuPont and the other Defendants now claim a right to unlimited indemnification from Chemours for DuPont's massive historical liabilities, without regard for the "maximum" numbers DuPont certified for those liabilities and upon which the spin-off was predicated. The Separation Agreement between DuPont and Chemours — the inappropriately named document embodying the one-sided arrangement DuPont forced on Chemours that purports to state Chemours's (limited) rights and (extensive) obligations — cannot be allowed and should not be read to permit that unlawful and inequitable result.

3. DuPont's management had a keen incentive to downplay or close its eyes to the true "maximum" liabilities at the time of the spin-off. The company and management were under activist attack. To save itself, management was looking to shift as much liability onto Chemours as possible — and, at the same time, to extract for DuPont a multi-billion dollar dividend payment from the new company. By lowballing the valuation of the liabilities and not investigating and

reflecting the true potential maximums, DuPont's management could heap more liabilities on Chemours and withdraw more cash for DuPont — while still calling the spin-off appropriate and Chemours solvent. That DuPont's certified "maximums" have since been revealed to have been routine and radical understatements speaks volumes about DuPont's true incentives at the time.

4. At the time of the spin-off, DuPont was defending a multi-district litigation involving 3,500 cancer and other bodily injury claims relating to a compound called PFOA. Even though DuPont certified a "maximum" liability for these cases of $128 million, the actual settlement amount just 19 months later was $671 million — over five times the supposed "maximum." Chemours notified DuPont that the certified "maximum" liability capped Chemours's obligations with respect to those cases. Although DuPont initially insisted that there was no such cap and Chemours needed to pay the entire cost, DuPont ultimately agreed to pay fifty percent of the settlement plus other amounts regarding PFOA liabilities.

5. But while the parties settled that initial dispute, DuPont has since gone back to its absolutist extreme on other matters where reality has overwhelmed its certified "maximums." As more of the "maximums" have been revealed as anything but, by even larger degrees, DuPont has reverted to the position that Chemours owes the entirety of the liabilities, without regard to the maximum

numbers upon which the economics of the spin-off and the DuPont board's approval of it were based.

6. For example, in February 2019, Chemours entered into a judicially approved consent order with the State of North Carolina to resolve the State's claims arising from DuPont's long-running discharges into the Cape Fear River and contamination of area groundwater. The consent order requires Chemours to take steps to remediate DuPont's historical contamination and to implement environmental protection measures that DuPont considered implementing years ago but decided not to pursue as too expensive. At the time of the spin-off, DuPont certified Chemours's "maximum" exposure in North Carolina as a miniscule $2.09 million. But the cost to Chemours of implementing the consent order will be more than $200 million — that is, more than 100 times DuPont's "maximum" certified number. Beyond that, many private lawsuits relating to DuPont's activities in the region remain outstanding, including a large class action as to which the North Carolina federal court recently denied DuPont and Chemours's motion to dismiss. DuPont has demanded indemnification for, and disclaimed any obligation to contribute to, all these liabilities, without regard to the $2.09 million "maximum" it certified.

7. Another example: In March 2019, the State of New Jersey sued and issued directives to Chemours and DuPont to recover the costs of DuPont's discharges all over the State. According to New Jersey, the remediation costs could be "staggeringly expensive," well into the "hundreds of millions of dollars" — an amount far higher that the "maximums" DuPont certified for the various sites in the State. Moreover, according to New Jersey, DuPont violated New Jersey law by spinning off Chemours on the basis of underestimated environmental liabilities without providing the State with the "financial assurance necessary to ensure" that the necessary clean-up can be done. Here again, DuPont has demanded indemnification from Chemours for, and denied any obligation to contribute to, the New Jersey liabilities, again without regard to the "maximums" it certified.

8. And unfortunately, there are other examples beyond North Carolina and New Jersey. As detailed below, DuPont imposed on Chemours its historical liabilities from benzene and perfluoroalkyl and polyfluoroalkyl substances ("PFAS"). For benzene, DuPont certified a "maximum" liability of $17 million at the time of the spin-off; yet, in 2018, it provided Chemours with a more comprehensive study valuing the potential maximum costs at over $111 million. DuPont addressed PFAS litigation, if at all, as part of a catch-all "maximum" of $194 million covering "General Litigation . . . to Perpetuity," which apparently

included everything from PFAS liabilities to commercial litigation; yet PFAS litigation is proliferating. Although Chemours is defending these claims (and New Jersey's), it is evident here as well that the real "maximum" potential liability was not what DuPont certified it was. But here as well, DuPont has refused to honor the maximums and demanded unlimited indemnification without regard to them.

9. As detailed below, Chemours seeks declarations that the unlimited indemnification DuPont is now seeking for these matters is contrary to Delaware law and/or the Separation Agreement. Defendants are not entitled to indemnification for historical DuPont liabilities that exceed the maximums it certified at the time of the spin-off for these matters, and may not preclude Chemours from seeking contribution for historical DuPont liabilities that exceed those maximums. As described more fully below, Chemours requests that this Court enter declarations to that effect on either of two alternative bases: (a) that under the circumstances here, the Separation Agreement should be interpreted as incorporating the DuPont-certified "maximums" for these matters as caps, or otherwise (b) that it is unenforceable by Defendants in excess of those "maximums" as a matter of Delaware law, equity and public policy.

10. Where, as here, a spin-off is predicated on maximum liability amounts that serve as the basis for the board's approval of the transaction, or that are

necessary to demonstrate the new company's solvency, those maximums must be given effect. If, as DuPont now maintains, the maximums it certified for its board have zero meaning and Chemours has uncapped liability without regard to them, then DuPont is admitting that the entire spin-off process was a sham. And in the future, other companies could predicate spin-offs on liability "maximums" that are knowingly wrong or certified without reasonable evaluation (as DuPont did here), secure in the knowledge that they could do so with impunity. Worse still, here, if Chemours really had uncapped responsibility for the true potential maximum liabilities, the resulting company would have been insolvent as of the time of the spin, meaning the spin-off would have been effected in violation of Delaware law. DuPont's position is contrary to statute, equity and public policy, and the Separation Agreement cannot be enforceable and should not be interpreted so as to permit it.

PARTIES

11. Plaintiff Chemours is a Delaware corporation, with principal executive offices at 1007 Market Street, Wilmington, Delaware. Chemours is a manufacturer of performance chemicals with customers in more than 120 countries and nearly 7,000 employees worldwide, including well over 1,000 in Delaware. Chemours was incorporated as a subsidiary by Defendant DuPont as of April 30,

2015. From that time until July 1, 2015, Chemours was a wholly owned subsidiary of DuPont. On July 1, 2015, DuPont spun off Chemours, distributing shares of Chemours stock to DuPont stockholders, and Chemours has since been an independent, publicly traded company.

12. Defendant DuPont is a Delaware corporation, with principal executive offices at 974 Centre Road, Wilmington, Delaware. DuPont is now a wholly owned subsidiary of Defendant DowDuPont. Before its August 31, 2017 merger with The Dow Chemical Company ("Dow"), DuPont was a publicly traded company that operated businesses including agriculture, electronics and communications, industrial biosciences, nutrition and health, performance materials and protection solutions segments.

13. Defendant DowDuPont Inc. ("DowDuPont") is a Delaware corporation, with principal executive offices at 974 Centre Road, Wilmington, Delaware. DowDuPont was formed following DuPont's merger with Dow. DowDuPont has underway a series of separation transactions, following which it will retain certain of DowDuPont's assets and liabilities and be renamed DuPont de Nemours.

14. Defendant Corteva, Inc. ("Corteva") is a wholly owned subsidiary of DowDuPont. Corteva is a Delaware corporation, with principal executive offices

at 974 Centre Road, Wilmington, Delaware. On June 1, 2019, DowDuPont plans to distribute to DowDuPont stockholders all issued and outstanding shares of Corteva common stock by way of a pro rata dividend. As of and following the distribution, Corteva is expected to be the direct parent of DuPont and to hold certain of DowDuPont's assets and liabilities.

FACTUAL ALLEGATIONS

I. DuPont decides to off-load most of its liabilities into a "spinco" and to extract a large dividend at the same time.

15. In 2013, DuPont's management began to consider restructuring the company, and in so doing, casting off DuPont's substantial environmental liabilities, including clean-up and other remediation obligations. The initiative was dubbed "Project Beta."

16. Project Beta focused on DuPont's Performance Chemicals unit. That unit historically manufactured and sold a wide catalogue of industrial and specialty chemicals, including titanium dioxide and a range of fluorochemicals and fluoroproducts used as and in refrigerants, lubricants, propellants, solvents, fire extinguishants and electronic gases. Because these businesses had created chemical byproducts as part of their chemical manufacturing processes, the unit had given rise to many of DuPont's environmental liabilities, including costly

remediation of prior emissions and the need for substantial investment in pollution abatement technology.

17. DuPont concluded that no rational buyer would accept the associated liabilities without limit, at least absent a price discount so substantial that the sale would not be financially beneficial to DuPont. So DuPont's management instead decided to pursue a divestment in which DuPont could control the transaction structure and economics. So began the spin-off of what would become Chemours.

18. Later in 2013, Project Beta assumed more urgency after the activist hedge fund Trian Fund Management L.P. ("Trian") took a stake in DuPont and began agitating for change. Trian argued that DuPont had failed as a conglomerate and should separate into three independent entities, focused on agriculture, specialty chemicals and performance chemicals. Trian also argued that DuPont's management lacked the skills to execute a reorganization. Among other things, Trian observed that DuPont had recently sold its Performance Coatings business (called Axalta) to private equity firm Carlyle, which promptly discovered an additional $229 million in annual earnings — confirming, Trian argued, DuPont's bloat and incompetence. "[B]y not running [Axalta] efficiently and selling the business for cash rather than doing a tax-free spin," Trian claimed, DuPont had squandered $5 billion in stockholder value.

19. Hoping to ward off Trian, DuPont planned a $5 billion stock buyback. To fund the repurchase, DuPont decided to move forward quickly with the Project Beta/Performance Chemicals spin-off. DuPont also decided to use the spin-off not just to cast off environmental liabilities, but also as a cash-cow to fund the anti-Trian stock buyback. So in October 2013, when it announced the planned Performance Chemicals spin-off, DuPont also determined that the unnamed "spinco" would pay DuPont a dividend of at least *$3.3 billion* upon divestment. To fund that massive dividend, the spinco would take on billions in debt. This huge dividend to DuPont was ordained before full analysis of the spinco's structure and capitalization was conducted.

20. Unmollified, Trian launched a proxy contest in early 2015. In response, DuPont went back to the Performance Chemicals well, announcing that the spinco payment back to DuPont would be even higher, about *$4 billion*, pushing spinco into a junk credit rating. DuPont also announced that substantially all that amount would be paid out to DuPont stockholders through stock repurchases over the succeeding 18 months.

II. DuPont designs the Chemours spin-off, unilaterally and on the basis of unreasonable financial data.

21. DuPont thus determined to dump the maximum possible environmental liability on spinco while extracting the pre-ordained $4 billion

payment. This would push the spinco, Chemours, to the edge. But that was, indeed, DuPont's goal. DuPont was not only looking to take every last cent of capital to fight off Trian. It also wanted to bury Chemours in liability precisely to prevent a repeat of the Axalta humiliation. Indeed, DuPont's bankers warned it that an underlevered spin may attract criticism from activists.

22. To achieve its desired result, DuPont (1) completely dominated the planning of the spin-off; (2) forced through an unprecedentedly disproportionate allocation of assets, debts and liabilities; (3) engineered a vastly understated valuation of the liabilities it would impose on Chemours to try to square the spin-off with Delaware law; and (4) sought to shield its conduct from public and judicial scrutiny by purporting to require private arbitration of any dispute raised by Chemours after it became independent.

A. DuPont crams down the spin-off.

23. DuPont made no effort to install procedural protections for Chemours or otherwise replicate an arm's-length bargain. To the contrary, DuPont worked to ensure its complete dominance over every aspect of the transaction.

24. DuPont refused to allow Chemours (or its prospective management team) to have independent counsel to represent the to-be company's interests in structuring the spin-off. Instead, DuPont and its outside counsel at Skadden, Arps,

Slate, Meagher & Flom LLP ("Skadden") unilaterally prepared all of the documents underlying and effectuating the spin-off.

25. DuPont's exercise of unilateral domination started from the outset. Although the spin-off was announced in October 2013, DuPont refused to allow any of the designated management team for Chemours to see drafts of the principal document — the Separation Agreement (attached as Exhibit A) — until late December 2014. (As background, Chemours was first incorporated in April 2015 in preparation for the spin-off. Prior to that time, however, DuPont had designated its prospective management team, although these individuals had no power regarding the spin-off terms. From April 2015 until the July 1, 2015 spin-off, Chemours was a wholly owned subsidiary of DuPont.)

26. Moreover, when DuPont finally sent the draft Separation Agreement to Chemours's general counsel-designate in late December 2014, DuPont had Skadden send him an extraordinary letter just before doing so. The letter emphasized that DuPont and Skadden would control the documentation process, that Skadden's "provision of legal services to DuPont . . . has been at the request and on behalf of DuPont alone," that Skadden would not provide Chemours legal advice, and that "Chemours will not be relying on Skadden to advocate for it or to protect its interests in connection therewith."

27. Beyond this, the draft Separation Agreement DuPont finally did provide was woefully incomplete. In particular, the draft did not include the schedules listing the assets and liabilities to be allocated to Chemours. As a result, Chemours's designated management team was unable to evaluate central economic terms of the transaction being forced upon their incipient company. Throughout the winter and spring of 2015, Chemours's designated management team repeatedly requested copies of these schedules; DuPont repeatedly refused to provide them.

28. Instead, DuPont took the position that Chemours's management had no reason or right to assess the economic terms because "this was not a negotiation." DuPont thus repeatedly reminded Chemours's management that any discussions between them and DuPont representatives were not considered or to be called "negotiations." Instead, in an Orwellian flourish, they were to be called "calibration" sessions, in which DuPont would inform Chemours's management what was being done and in which Chemours's personnel were instructed that they were permitted only to ask questions for "clarification."

29. The culmination of these "calibration" sessions was an April 2015 meeting with DuPont's senior management. After months of asking, Chemours had just been provided the preceding Friday evening (of Easter weekend, no less)

with some of the basic economic terms of the spin-off. Chemours's designated CEO, CFO and general counsel came to the meeting prepared with facts, figures and eight pages of talking points demonstrating the unfairness of the transaction DuPont was planning. DuPont largely ignored and then summarily rejected each of Chemours's requests.

30. Moreover, leading up to a subsequent meeting with DuPont's senior management in June 2015, Chemours's CFO sent an email pleading that he needed an additional $200-300 million in cash reserves to function on day one. DuPont summarily rejected this plea as well, and castigated him for putting the request in an email.

31. The summary and arbitrary nature of the rejections is well-illustrated by DuPont's refusal to accede even to Chemours's repeated requests that DuPont remove the patently false clause in the Separation Agreement stating that "[t]he Parties have participated jointly in the negotiation and drafting" of the agreement. Separation Agreement § 10.19.

32. And finally, when Chemours's CEO was invited to a meeting at which DuPont's board considered the appropriateness of Chemours's strained capital structure, he was told only to answer questions posed by the board and not to volunteer his opinion.

33. As the July 1, 2015 target date for the spin-off drew closer, DuPont dispensed with even the charade of Chemours's participation. Thus:

(a) On May 12, 2015, to facilitate the extraction of capital from Chemours, DuPont caused Chemours to assume $4 billion in debt and used the proceeds of that debt to authorize a $3.91 billion dividend back to DuPont. On the date this dividend was authorized, Chemours's board consisted exclusively of three DuPont employees who were not going to be with Chemours following the spin-off (DuPont's M&A Counsel, Nigel Pond; DuPont's Treasury Manager, Michael Heffernan; and DuPont's M&A Manager, Steven Zelac).

(b) DuPont had also begun executing "completed intercompany agreements" on Chemours's behalf that Chemours employees had never seen.

(c) On June 9, 2015, the Chemours "board" — still consisting exclusively of the three DuPont employees, Messrs. Pond, Heffernan and Zelac — held a board "meeting" to "discuss" whether Chemours should approve the spin-off and the Separation Agreement. The only other attendees were other DuPont employees and Skadden. The entire meeting lasted 55 minutes, and consisted of "presentations" by Skadden and DuPont.

At the end of this perfunctory show exercise, the three DuPont-employee directors (1) took "notice" that "DuPont, as the sole stockholder of the Company [Chemours], has communicated" that the DuPont board had determined that the spin-off and the Separation Agreement "are in DuPont's best interests," and (2) "unanimously" adopted resolutions approving the spin-off and the Separation Agreement on Chemours's supposed behalf. Right after doing so, the three "directors" resigned from the Chemours board.

(d) On June 26, 2015, DuPont had Pond — whom DuPont now designated a "Vice President" of Chemours (a temporary position he would not hold after the spin took place the next week) — exercise his contrived authority to "execute" the Separation Agreement on Chemours's supposed behalf.

34. Indeed, DuPont's attempted unilateral dictates persisted even *after* the spin-off took place on July 1. DuPont had intended to have all the one-sided "intercompany" agreements signed and added to the companies' shared database in advance of the spin-off, while DuPont was fully in control and could direct its employees to sign "for" Chemours. But after July 1, DuPont realized that one of the agreements (an imbalanced supply agreement) had been added to the database

without being signed. So DuPont attempted to supplement this agreement with an undated "side agreement" signed by Pond. Chemours — now independent and beyond DuPont's dictates — protested, and the companies eventually reached an agreement on this one subject with commercially reasonable terms.

35. In short, no one affiliated with Chemours was given the opportunity to negotiate the terms of the Separation Agreement. No one representing Chemours's interests ever agreed to the Separation Agreement. The use of the word "Agreement" is simply a farce.

B. DuPont unilaterally decrees a totally disproportionate allocation of assets, debts and liabilities.

36. There is a reason why DuPont refused any concept of negotiation and controlled what its board would hear: the Separation Agreement embodied an abnormally lopsided spin-off.

37. Chemours received only 19% of DuPont's business lines, but was saddled with approximately two-thirds of DuPont's environmental liabilities and 90% of DuPont's pending litigation by volume of cases. On top of that, it was burdened by all of the debt necessary to fund the nearly $4 billion dividend to DuPont.

38. The liabilities imposed on Chemours included environmental liabilities arising from a vast array of over 80 DuPont-associated sites. The great

majority were not sites that Chemours would operate following the spin-off, including at least 35 that were never owned by DuPont and dozens that were either previously owned by DuPont or were not operating any more.

39. DuPont even "gave" Chemours liabilities that had nothing to do with its performance chemicals business. Chemours received all liability related to DuPont's historical explosives operations and asbestos and benzene exposures. None of these liabilities had anything to do with performance chemicals. The benzene liability stemmed, in part, from the Performance Coatings business that DuPont sold to Carlyle in the Axalta transaction. In that sale, DuPont could not get Carlyle to assume the benzene liability, even though Carlyle was purchasing the business that actually generated it. So since DuPont still had the liability, it decided just to hand it to Chemours. DuPont even assigned DuPont's Wilmington office building on Rodney Square to Chemours after determining that the landmark headquarters was a liability, thereby allowing DuPont immediately to decamp to headquarters outside of the city. Chemours had no say in any of the allocation of liabilities and did not even see the final schedule of liabilities until days before the spin-off was consummated.

40. The result of this process was an extreme transaction with an abnormally skewed distribution of liability. Chemours's capital structure would

brand it as a distant outlier among spin-offs. It was spun off at inception with a debt-to-EBITDA ratio of 5.5 — meaning that its liabilities exceeded its unadjusted earnings by a multiple of 5.5, a remarkably high ratio. DuPont's financial advisors had to use leveraged buy-outs, not spins or public company transactions, as comparables for their financial analysis. This left Chemours, particularly if the DuPont-certified liability maximums were systematically wrong, virtually no cushion for liquidity, necessary capital expenditures or adverse developments — despite warnings from DuPont's advisors that discovery of new environmental liabilities and imposition of new environmental clean-up costs had bankrupted prior spin-offs.

41. To cement this unilateral allocation of liability, DuPont inserted ten pages of indemnification and related provisions as Article VI of the Separation Agreement (the "Indemnification Provisions"). The Indemnification Provisions include a purported requirement that Chemours defend and indemnify DuPont against any liability "relating to, arising out of, by reason of or otherwise in connection with" the liabilities that DuPont assigned to Chemours. Separation Agreement § 6.3. In other words, if any regulator or public or private plaintiff sought to hold DuPont accountable for any of these liabilities, DuPont could claim

that Chemours was responsible for defending DuPont, paying the defense costs and ultimately indemnifying DuPont for any liability.

42. At the same time, the Indemnification Provisions also seek to prohibit Chemours from pursuing any indemnity, contribution or other claim-over seeking reimbursement from DuPont for the liabilities being transferred. Chemours may not "make any claim for offset, or commence any action, including any claim of contribution or any indemnification" against DuPont with respect to any of those liabilities. Separation Agreement § 6.1(c). In other words, if Chemours has to pay any of the liabilities (either because a regulator or plaintiff pursued it directly or because it had to indemnify DuPont), the Indemnification Provisions seek to preclude Chemours from having any recourse against DuPont.

C. DuPont's management justifies the spin-off to its board on the basis of certified "maximum" liability numbers that bear no relation to reality.

43. Of course, before the spin-off could be consummated, DuPont's board needed to determine that it was "appropriate" (as recited on page one of the Separation Agreement) and consistent with Delaware law.

44. Among other things, that required a showing that the new company would be solvent and viable. And indeed, at initial meetings, members of the

DuPont board raised questions along these very lines, including about the potential size of the liabilities being transferred.

45. DuPont's management thus conditioned the spin-off on "the receipt of an opinion from an independent appraisal firm to [DuPont's] Board confirming the solvency of each of DuPont and Chemours after the" spin-off. Separation Agreement § 4.5(e). To make the necessary record, DuPont's management commissioned Houlihan Lokey to prepare a financial analysis and opinion concluding that Chemours would be solvent as of the spin-off date.

46. That analysis required Houlihan Lokey to take account of the huge and volatile liabilities DuPont was piling into Chemours. But rather than seeking a fair and independent evaluation of the amount of those liabilities, DuPont arranged for Houlihan Lokey to predicate its analysis and opinion on numbers DuPont would give it as the "High End (Maximum) Realistic Exposure" for each of the liabilities.

47. As DuPont was aware, the accuracy and reliability of these "maximum" liability numbers was critical. DuPont knew that the Chemours balance sheet was close to the edge. For example, when Chemours management complained prior to the spin-off about the lack of cash in its reserves, DuPont responded that Chemours could draw on its $1 billion cash revolver, despite

knowing that because of the capital structure it had imposed on Chemours, doing so in full would cause Chemours to break its debt covenants. Likewise, when Chemours expressed concerns prior to the spin-off about the cash effect of paying quarterly stockholder dividends of $100 million, DuPont ignored these concerns and declared the Chemours dividend for the last quarter before the spin. DuPont only permitted Chemours to memorialize its concerns by including in its public filings that "any subsequent dividend [would] be subject to the sole discretion of [Chemours's] post-distribution, independent board." In short, it was clear that, if the "maximum" liabilities were understated in any substantial respect, Chemours could not be deemed solvent.

48. In May 2015, DuPont presented Chemours's newly appointed CFO (who had not previously worked for DuPont or in the chemical industry) with financial projections and a list of ostensible "High End (Maximum) Realistic Exposure" numbers for 87 separate categories of transferred liabilities. DuPont demanded that the CFO certify to Houlihan Lokey the accuracy of these "High End (Maximum) Realistic Exposure" figures, together with the DuPont-sponsored financial projections.

49. Chemours's CFO refused to sign the certification — which had been drafted by DuPont — unless, among other things, it were made clear that the

maximum liability numbers came from DuPont and that he was relying on DuPont for their accuracy. DuPont ultimately agreed to this. DuPont's certification of those numbers was manifested in multiple ways.

50. First, the Chemours CFO's certification to Houlihan Lokey expressly recites that the maximum liability numbers are based on consultation "with the general counsel and certain other officers of DuPont" and "outside counsel, advisors, and consultants to DuPont" about "pending and threatened litigation, potential environmental liabilities and other contingent liabilities of the Company." In short, the liability numbers relied upon by the Chemours CFO were those vouched for by DuPont itself — nothing more.

51. Second, DuPont also provided a range of "Backup Certificates" signed by its Accounting Director, Chief Environmental Counsel and Corporate Counsel "on behalf of DuPont" that "certif[ied]" and vouched for the accuracy of the maximum liability numbers. Each of these began by reciting that DuPont "understand[s] that Mark E. Newman [Chemours's CFO] is relying on this Backup Certificate and the statements herein in delivering the CFO Certificate to Houlihan Lokey." Collectively, the Backup Certificates attach all 87 "High End (Maximum) Realistic Exposure" numbers and "certify" that they represent DuPont's "best judgment" of the "maximum realistic exposure range of each such contingent

liability." The Backup Certificate from the Accounting Director further "certif[ies]" that there are no "facts known to [DuPont] which could give rise to . . . other contingent liabilities" beyond the 87 categories.

52. But despite knowing how critical these "maximums" were to its board's consideration of the spin-off and to Chemours's solvency, DuPont's management did not conduct a reasonable inquiry into or a reasonable evaluation of these liabilities. To the contrary, DuPont engineered the "High End (Maximum) Realistic Exposure" figures in a way that would massively understate the real potential maximum exposure.

53. For example, in itemizing the environmental contingent remediation liabilities at various sites, DuPont simply proceeded from figures used to prepare its accounting reserves. This approach understated the real maximum liabilities. This is because accounting reserves include only liabilities that are both probable and estimable. Excluded from accounting reserves — and therefore excluded from DuPont's "maximum" exposure certifications — were two critical components of any realistic assessment of true maximum liabilities. First, these accounting reserves included only liabilities and amounts that were viewed as "probable" as of December 31, 2014. Where DuPont had deemed liabilities and amounts to be *possible*, though not "probable," the liabilities and amounts were excluded from

the reserves — and hence from the supposed liability "maximums," no matter how vast, imminent or possible the potential liability was, and even where DuPont knew that higher clean-up costs were possible. Second, the accounting reserves also excluded liabilities that *were* regarded as probable at the time, but for which DuPont had not yet made an estimate (including because DuPont deemed them not to be estimable). To the extent Chemours personnel were consulted in this process, they understood they were simply to use the numbers that had been developed for ordinary accounting purposes — in effect, a cut-and-paste exercise that by definition excluded consideration of risks that clearly existed, but were not yet viewed as meeting the "probable and estimable" limitation of the accounting rule — and were not given the underlying information DuPont had that was necessary to assess the real potential maximums.

54. DuPont's approach to "High End (Maximum) Realistic Exposure" for other categories of liabilities was unreasonable as well. In fact, for multiple categories of litigation (including PFOA, benzene and PFAS), DuPont does not appear to have undertaken *any* analysis. Instead, the DuPont certification invoked a supposed "analysis" of the maximum liabilities done by Deloitte Transactions and Business Analytics LLP ("Deloitte") as the source for the certified "maximums." But Deloitte appears to have done nothing of the sort. For example:

(a) Deloitte apparently expressly advised DuPont that the numbers it provided were *not* "worst case scenarios" — so DuPont's certified "maximums" were numbers that Deloitte said were *not* the actual maximums.

(b) Deloitte apparently informed DuPont that its numbers were not based on an actual claims analysis or a value assessment of the cases.

(c) For PFOA, Deloitte thus apparently did not even try to evaluate the PFOA cases themselves or examine the likely or potential damages in them. Nor did Deloitte take into account that the PFOA cases were governed by a prior settlement agreement under which DuPont was barred from raising a key defense (general causation). Instead, Deloitte performed arithmetic for success rates in all tort cases *generally*, and assigned DuPont the same chance of victory in PFOA cases as the defendant has in every other tort case in the courts where the PFOA cases were pending. Based on that completely irrelevant data set, Deloitte apparently simply posited that 20% of the cases would go away for nothing, that DuPont would win 68% of the trials and that the remaining cases could then be settled relatively inexpensively. (As detailed below, DuPont lost *every* trial and the settlement cost $671 million.)

(d) For other liabilities (including benzene and general litigation, which included PFAS), Deloitte appears just to have done arithmetic assuming a continuation of DuPont's historical "run rates" without any analysis of the liability at issue to see whether the assumption was valid. But DuPont then certified these numbers as high-end maximums anyway, even though Deloitte had not presented them as such and even though DuPont was doing a spin-off precisely because the liabilities were so volatile and potentially huge that it could not profitably sell the Performance Chemicals unit.

55. In concocting the "High End (Maximum) Realistic Exposure" figures, DuPont thus made no effort to assess or evaluate the *real* maximum potential liabilities. Instead, it employed an unreasonable process that would predictably understate the liability profile it was creating for Chemours. Yet management then certified the numbers to Houlihan Lokey as "maximum" liability figures, so that Houlihan Lokey would incorporate them into its analysis and advice to the DuPont board. This approach suited management's purpose because it provided DuPont's board a basis to approve a spin-off that simultaneously off-loaded these liabilities on Chemours *and* transferred nearly $4 billion to DuPont. Predictably, the

supposed "High End (Maximum) Realistic Exposure(s)" have proven systematically and spectacularly low.

D. DuPont crams down one-sided arbitration provisions.

56. Finally, DuPont's management decided to insert into the Separation Agreement a requirement that all disputes go to an essentially "confidential" arbitration in New York. Not only did this purport to shield the propriety and effect of a Delaware spin-off from this Court's review, but as with every aspect of the Separation Agreement, the arbitration provisions themselves tilt radically in DuPont's favor.

57. For example, the Separation Agreement recites that certain of DuPont's allocations of environmental liabilities are presumptively valid in the event of a subsequent dispute. Separation Agreement § 1.1(19)(ii). The Agreement then goes on to require that if Chemours challenges DuPont's allocation in arbitration and loses, Chemours has to pay all DuPont's costs. *Id.*

58. Similarly, the Separation Agreement purports to strip the arbitrator of power to consider an array of ordinarily available remedies, including that the arbitrator may not rule that any provision of the Separation Agreement is invalid or unenforceable and may not modify, limit, suspend or reform any provision. *Id.* § 8.2(e). And it purports to bar Chemours from challenging DuPont's unilateral

allocation of liability by schedule, through arbitration or otherwise. *Id.* § 1.1(19)(ii).

59. Chemours objected to this arbitration scheme, but DuPont, as usual, unilaterally rejected the objection and crammed the provision down anyway. DuPont even rejected Chemours's request that, if DuPont insisted on an arbitration provision, it should allow for arbitration in Delaware. These provisions were not the product of consent, much less negotiation.

60. Instead, the purpose of these crammed-down provisions was to stack the deck against any post-spin challenge by Chemours to what DuPont was imposing. By DuPont's unilateral dictate, though it was invoking Delaware law as the basis and cover for the spin-off, Chemours would not be able to bring any of the resulting Delaware law issues to this Court. Instead, DuPont decreed that Chemours could go only to a private, virtually secret arbitration in New York, in which the scope of arbitral review would be limited, in which the available remedies would be strictly confined in ways that would not confine this Court, in which DuPont would be deemed presumptively right on key points, and after which Chemours would be on the hook for DuPont's costs if it lost (as DuPont tried to pre-ordain).

III. DuPont consummates the spin-off and seeks to wash its hands of its environmental liabilities.

61. On June 5, 2015, DuPont's board approved the spin-off, determining on the basis of Houlihan Lokey's opinion "that it [was] appropriate, desirable, and in the best interests of DuPont and its stockholders" to conduct the transaction, including the "assignment of . . . liabilities" to Chemours.

62. In December 2015, DuPont agreed to merge with Dow and stated that it would proceed with a reorganization of the combined business lines approximately along the lines that DuPont had resisted in the Trian proxy fight.

63. At the conclusion of this reorganization, which DuPont has targeted for June 1, 2019, the combined DowDuPont entity will have separated into three independent companies:

- Dow Inc., which was spun off on April 1, 2019, and contains DowDuPont's materials sciences business, along with all financial assets and liabilities of historical Dow not related to its agriculture, specialty products or materials science businesses;
- Corteva, which will be spun off on June 1, 2019 and will contain DowDuPont's agriculture and nutritional businesses, along with all of the outstanding common stock of the historical entity DuPont exclusive of its subsidiaries and 29% of all financial assets and liabilities of historical DuPont not related to the agriculture, specialty products or materials sciences businesses;
- DowDuPont, which will be the surviving entity, will be renamed DuPont de Nemours and will contain DowDuPont's specialty products business, along with the balance of the financial assets and liabilities of historical DuPont not assumed by Corteva.

64. Amidst this restructuring, DowDuPont has apparently apportioned the purported indemnification and related obligations DuPont imposed upon Chemours. In a March 19, 2019 securities filing, DowDuPont disclosed that Corteva anticipated indemnification from Chemours of hundreds of millions of dollars. Shortly after this disclosure, Chemours requested confirmation that the planned separations would not result in an increase in any obligations that Chemours may have under or in connection with the Separation Agreement or reduce the assets that would be available to satisfy any obligations owed to Chemours. On May 3, 2019, DowDuPont responded with certain information about the transaction and the identities of the companies that would claim the benefit of DuPont's purported rights under the Indemnification Provisions. DowDuPont's letter did not address many of the confirmations Chemours sought, including about reduction of assets.

IV. The Spin-off's Effect on Chemours

A. Chemours takes immediate action post-spin to avoid financial disaster.

65. Things did not go as well for Chemours in the aftermath of the spin-off. Chemours's stock price — originally pegged by DuPont at $21 per share — collapsed to $11.48 within a month and to $3.16 per share within six months, an

85% decline. Shortly after the spin, Chemours announced it was cutting its future dividends to almost zero.

66. Chemours's quick suspension of future dividends underscored the dire financial situation DuPont created for it. Before the spin-off, DuPont promised that Chemours would maintain a substantial dividend such that the pre-spin overall DuPont dividend would be sustained following the spin by combined dividends from the two companies. In fact, as noted above, before the spin (when Chemours remained a DuPont subsidiary), DuPont actually declared Chemours's initial post-spin quarterly dividend. But upon becoming independent, Chemours recognized that the dividend was not sustainable, even assuming the maximum liability numbers were respected.

67. Despite even that step, Chemours was running short of liquidity within months of the spin-off. Chemours had to take drastic measures, including laying off 1,000 employees (many in Delaware), shuttering plants or production lines in Delaware and Tennessee, selling off business lines and undertaking two corporate restructurings and multiple amendments to its credit agreements.

68. In November 2015, Chemours announced that it would sell to Dow its aniline facility in Beaumont, Texas for approximately $140 million in cash. At the time the sale was announced, Dow was just weeks away from entering a merger

agreement with DuPont. The Beaumont sale thus effectively returned to DuPont an asset that it had just spun off. Three months later, in February 2016, DuPont advanced Chemours $190 million for goods and services to be provided to DuPont through mid-2017.

B. The "maximum" liability numbers DuPont certified prove to be systematically and spectacularly wrong.

69. Chemours thus barely survived its outsized debt burden and lopsided balance sheet even assuming the maximum liability numbers were correct. But Chemours also began to face a growing threat from the historical liabilities that DuPont thrust upon it. In short, the "maximum" liability numbers that DuPont certified and that formed the basis for the DuPont board's approval of the spin have proven regularly and radically wrong.

70. Nonetheless, DuPont now insists that the maximum liability numbers are of zero force and effect, has demanded 100% indemnification above those numbers and has taken the position that the Indemnification Provisions apply even after the maximum at issue has been exceeded.

71. As detailed below, the first time this dispute arose, DuPont eventually yielded substantially, agreeing to pay $335 million towards the liability at issue and to provide up to $125 million further to Chemours to defray follow-on liability. However, as additional and potentially even larger excesses above other

"maximums" have more recently emerged, DuPont has re-circled its wagons and reverted to making indemnification claims that Chemours must pay for everything while DuPont escapes scot-free.

1. PFOA

72. Among the liabilities that DuPont foisted on Chemours was an Ohio multi-district litigation, in which 3,500 plaintiffs were seeking damages for cancer and other diseases allegedly caused by exposure to PFOA. DuPont historically used PFOA in its manufacture of fluoropolymers and fluoroelastomers. DuPont purchased PFOA from 3M and later made it for its own use.

73. The 3,500 cases were governed by a prior DuPont settlement agreement, in which DuPont resolved a class action by, among other things, paying $70 million to fund health studies by an independent science panel to opine as to which diseases (if any) had a "probable link" to PFOA exposure. Under the settlement, if the science panel found a "probable link" as to a disease, plaintiffs having that disease could then bring personal injury actions against DuPont and DuPont could not defend by contesting general causation. The 3,500 cases all involved diseases as to which the science panel found a "probable link," including approximately 250 plaintiffs with kidney or testicular cancer.

74. In connection with the spin-off, DuPont certified to Houlihan Lokey that the "High End (Maximum) Realistic Exposure" for these 3,500 cases was $128 million, *including* defense costs. This number was a baseless concoction. First, DuPont was paying substantial sums annually on defense costs alone and the cases were going to go on for years. Moreover, the notion that the 3,500 cases themselves would all be resolved for whatever was left of $128 million after defense costs was baseless. These were serious cases — hundreds of cancer victims, others with other serious diseases, and DuPont was barred under the settlement agreement from raising a principal defense. But DuPont did not make a serious attempt to evaluate the potential liability these cases represented when it certified the $128 million maximum.

75. Following the spin-off, it became clear that the $128 million maximum would be exceeded — indeed, greatly so. DuPont lost the first three individual bellwether cases to the tune of $19.7 million total. Other bellwether cases were proceeding, and of course the nearly 3,500 other cases remained. In February 2017, following protracted discussions, the 3,500 cases ultimately settled for $670.7 million not including defense costs: well over *five times* the "maximum" that DuPont had certified just 19 months before.

76. As this was unfolding and it became clear that the total liability would far exceed the $128 million maximum, Chemours notified DuPont that any indemnification under the Separation Agreement was capped at $128 million.

77. In a July 2016 response, DuPont claimed that the $128 million "High End (Maximum) Realistic Exposure" it certified to its board "represented only estimates based on the best judgment of management and its advisors given the available information at the time." According to DuPont, the $128 million maximum had no legal effect and no consequence whatever — although, of course, it (along with the other liability "maximums") had been the basis for the board's approval of the spin-off and the justification for the nearly $4 billion dividend imposed on Chemours. DuPont asserted that, under the Separation Agreement language it had unilaterally drafted, Chemours was "contractually obligated to indemnify DuPont for any and all Indemnifiable Losses . . . including without limitation any and all judgments." And DuPont purported to direct Chemours to "cease and desist from making misleading public statements" to the contrary.

78. Chemours responded that DuPont had "specifically certified" the $128 million as Chemours's maximum exposure, and that this maximum figure "formed the basis for the solvency analysis that was presented to the DuPont Board and on

which the Board relied in assessing and approving Chemours' capital structure and the spin."

79. The parties ultimately settled the dispute as to PFOA (in a settlement applicable only to PFOA). Notwithstanding DuPont's insistence that the liability maximums were of no effect and that Chemours owed the entirety of the liability, DuPont agreed to pay $335 million — 50% of the $671 million settlement of the 3,500 cases. And DuPont also agreed to pay up to an additional $125 million toward the costs (including defense) of additional PFOA-related litigation.

2. North Carolina environmental liabilities

80. Unfortunately, it has since become clear that PFOA was not the only category of liability where DuPont's certified "maximum" has proven baseless. To the contrary, the situation is similarly stark with respect to DuPont's Fayetteville Works operation in North Carolina.

81. When it spun Chemours off in 2015, DuPont knew that the Fayetteville plant had been discharging perfluoroalkyl and polyfluoroalkyl substances ("PFAS") for 30 years or more into the Cape Fear River, which serves as the source of drinking water for tens of thousands of people. In 2010, DuPont commissioned a "Blue Ribbon Panel" of company managers, scientists and engineers to identify solutions for this recognized issue. This culminated in a

range of options, including a $60 million investment in technology that the team believed would end the discharges and a recommended $20 million investment that the team believed would reduce the discharges by 70%. The team also rejected as an option that DuPont do nothing.

82. But the best solution, and even the Blue-Ribbon Panel's more modest recommended solution, was too much for DuPont. Instead, after installing a $2.3 million gas permeator system that effectively eliminated one wastestream responsible for certain fluorinated compounds, DuPont decided to terminate the rest of the project in late 2013. Coincidentally, this decision came right around the time DuPont conceived and announced its plan to spin off Chemours, to give Chemours the Fayetteville Works facility and to assign Chemours the related liabilities. Why bother spending money to fix the problem, DuPont apparently reasoned, when it could be conveniently passed on to Chemours.

83. Despite knowing all this, DuPont inexcusably certified a mere $2.09 million as the "High End (Maximum) Realistic Exposure" liability for Fayetteville Works. Exacerbating matters, DuPont included *nothing* in Chemours's projections for the technological improvements, and apparently did not even try to take into account the tort liability that could arise from the decades of emissions.

84. Beginning in September 2017, the State of North Carolina, public water authorities, well owners and a consolidated putative class of North Carolina residents, among others, filed suit against Chemours and/or DuPont.

85. In October 2017, DuPont demanded that Chemours agree to indemnify it for all of this, without regard to the $2.09 million maximum. Chemours notified DuPont that the $2.09 million maximum capped its indemnification obligations and reserved all rights on the issue. Chemours also notified DuPont that it reserved the right to seek contribution or reimbursement from DuPont for amounts Chemours paid above that maximum.

86. It is now indisputable that DuPont's $2.09 million maximum will not suffice against this litigation — not even close. In February 2019, after extensive negotiations with the State, Chemours entered a consent order with North Carolina to settle the State's claims on terms that were subject to public comment and approved as fair and appropriate by the Court. Among other things, the consent order requires Chemours to adopt the very-same abatement technology that DuPont previously declined to install and to undertake extensive remediation regarding the cumulative effects of DuPont's long-running historical emissions. The cost to Chemours will be in excess of $200 million — approximately *one hundred times* more than DuPont's certified "maximum" figure for the Fayetteville

Works site. And the remaining lawsuits remain outstanding. In fact, the putative class actions have been consolidated into one large purported class action, and a North Carolina federal court recently largely denied DuPont and Chemours's motion to dismiss it.

87. Nevertheless, and despite the parties' prior resolution regarding PFOA, DuPont has hewed to its position that the $2.09 million maximum has no force or effect, that Chemours must pay for everything and that DuPont should pay nothing.

3. New Jersey environmental liabilities

88. There is, unfortunately, more. Recently, the State of New Jersey has instituted litigation concerning environmental liabilities arising from DuPont's historical activities there. In March 2019, New Jersey filed several lawsuits against DuPont and Chemours, warning that the costs of compensating the State for DuPont's legacy environmental liabilities across multiple sites in the State could be "staggeringly expensive," and seeking compensatory and punitive damages. At the time of the spin-off, DuPont certified that the "maximum" Chemours could have to pay for total New Jersey environmental liabilities was $337 million, divided among different sites in the State. In 2018, in connection with the DowDuPont spin-off, DuPont revised its liability estimate upward to

approximately $620 million. But New Jersey criticized even DuPont's upward-revised estimates, claiming it "implausible" that these amounts could represent "good-faith estimates of [DuPont's historical New Jersey] environmental obligations and liabilities." Although Chemours is defending against New Jersey's claims and the matters are in their early stages, it is evident (again) that the "maximum" potential liability is not what DuPont certified it was.

89. Moreover, and notably for purposes here, New Jersey also alleges that DuPont's efforts to dump its liabilities on Chemours were improper. Instead of "working in good faith to address the contamination it released into New Jersey's environment," New Jersey states, "DuPont knowingly concealed the true nature of the chemicals it discharged, while simultaneously moving forward with a corporate reorganization that moved its 'performance chemicals' businesses . . . and the associated liabilities to Chemours . . . and away from DuPont."

90. And in so doing, New Jersey claims, DuPont violated not just statutory and common-law requirements regarding environmental discharges and clean-up, but the State's Industrial Site Recovery Act ("ISRA"). ISRA requires owners of specified industrial sites to, among other things, ensure that specified environmental impacts are remediated (or that adequate funding remains for remediation) before doing certain corporate or similar transactions. The statute's

goal, according to New Jersey, "is to ensure that 'funding for the cleanup of industrial establishments is set aside at the time it is available from a transfer or closing' such that 'contaminated property is not abandoned to the State for cleanup'" (quoting N.J.S.A. 13:1K-7).

91. New Jersey claims that, by spinning off Chemours on the basis of underestimated environmental liabilities without providing notice or meeting the ISRA requirements, DuPont violated ISRA and "thwarted [the State's] right pursuant to ISRA to obtain the financial assurance necessary to ensure that all hazardous substances and pollutants . . . will be remediated in accordance with ISRA and the [New Jersey Department of Environmental Protection's] regulations."

92. Beyond the lawsuits brought by the State itself, a New Jersey municipality has brought suit against DuPont seeking over $1 billion to address alleged clean-up costs and the State's Department of Environmental Protection has issued directives to DuPont and Chemours (among others) regarding remediation and clean-up that threaten to impose very substantial additional costs.

93. True to form, DuPont immediately demanded that Chemours agree to indemnify it fully, without regard to the liability maximums it certified for each respective New Jersey site. Chemours notified DuPont that the applicable liability

maximum caps its indemnification obligations and reserved all rights on the issue. Chemours also notified DuPont that it reserved the right to seek contribution or reimbursement from DuPont for amounts Chemours paid above that maximum.

4. Benzene and PFAS

94. Nor is that all. As noted, DuPont imposed all its benzene-related liabilities on Chemours. The "High End (Maximum) Realistic Exposure" DuPont certified for this category was $17 million, including defense costs. But in 2017, when DuPont studied the availability of insurance for benzene liability, it commissioned a more comprehensive study by a consultant (not shared with Chemours until late 2018). This time around, DuPont's advisors valued the potential maximum costs at over *$111 million*. Put otherwise, when DuPont's management had an incentive to minimize the estimated liability so that they could extract as much money from Chemours as possible, the "maximum" was $17 million. But when DuPont needed a real number for its own purposes, the maximum liability became 6-7 times higher. Once again, DuPont has refused to agree that its certified $17 million maximum is of any consequence.

95. Finally, there is the rapidly unfolding litigation regarding PFAS. For context, "PFAS" refers to the entire suite of perfluoroalkyl and polyfluoroalkyl substances. Although PFOA is one such substance, PFAS litigation involves other

substances (including, in the case of DuPont and Chemours, GenX) and thus goes beyond the parties' prior settlement regarding PFOA.

96. In certifying numbers to Houlihan Lokey, DuPont did not even purport to conduct an evaluation of PFAS liability (apart from PFOA). It certified a catch-all "High End (Maximum) Realistic Exposure" of $194 million for all other "General Litigation . . . to Perpetuity," which Houlihan Lokey reflected as including everything not separately valued — from PFAS liability to commercial litigation.

97. Wrong again. PFAS litigation filings, including some targeting Chemours and/or DuPont, are proliferating. Many PFAS claims (some on which DuPont and/or Chemours are defendants) have been consolidated in a multi-district litigation in federal court in South Carolina; others remain in state court elsewhere (including the New Jersey and North Carolina litigation described above in this complaint).

98. Although Chemours is defending the benzene and PFAS claims and the matters are in their early stages, it is sadly clear again that the real "maximum" potential liabilities are not what DuPont certified they were. But here as well, DuPont has refused to honor the maximums and demanded indemnification without regard to them.

* * * *

99. As a result of the foregoing, the parties have a ripe dispute with respect to the North Carolina environmental liabilities, as to which the $2.09 million maximum has now been exceeded. They also have a dispute about the New Jersey environmental liabilities, benzene and PFAS, as well as potentially other categories of liabilities.

100. Chemours accordingly seeks relief from this Court declaring that Defendants are bound by the maximums DuPont certified. Specifically, as detailed more fully below, Chemours seeks declarations that the maximums cap the Indemnification Provisions for these matters, and that Defendants thus are not entitled to indemnification for historical DuPont liabilities that exceed the maximums and may not preclude Chemours from seeking contribution for historical DuPont liabilities that exceed those maximums. As used below, "liability maximums" refer to the "High End (Maximum) Realistic Exposure" certified by DuPont for the site, facility or compound at issue, along with the certification that there were no "facts known to [DuPont] which could give rise to . . . other contingent liabilities" with respect to that site, facility or compound.

101. In the alternative, Chemours seeks return of the $3.91 billion dividend DuPont unilaterally extracted from it. If the liability maximums DuPont certified

do not cap the transferred historical liabilities and the Indemnification Provisions, then Chemours was insolvent at the time of the spin-off. In that event, the dividend paid to DuPont was unlawful and also constituted unjust enrichment of DuPont. Either way, it must be returned.

CLAIMS FOR RELIEF

COUNT ONE

(Declaratory Judgment – Based on the Spin-off)

102. Chemours repeats and incorporates by reference the allegations above.

103. Under the Delaware General Corporation Law, common law and public policy, a parent company may conduct a spin-off transaction creating an independent company only if, among other things, the parent's board of directors both determines that the spin-off is appropriate and complies with all legal requirements and the new company will be solvent as of the time of the spin-off.

104. DuPont predicated its board's determination that the spin-off of Chemours was appropriate and legal, and that Chemours was solvent as of the time of the spin-off, on the Houlihan Lokey opinion. The Houlihan Lokey opinion, in turn, was expressly predicated on the liability maximums certified by DuPont.

105. The liability maximums were not the product of a reasonable inquiry into or a reasonable evaluation by DuPont of the liabilities transferred to

Chemours. To the contrary, DuPont's management made an unreasonable inquiry, designed to understate or predictably causing understatement of the maximum liabilities. DuPont had knowledge of, or a reasonable inquiry would have turned up, facts indicating that the maximum potential liabilities were significantly higher than the certified maximums.

106. If DuPont had disclosed the true maximum potential liabilities and its current position that Chemours would have unlimited responsibility for them to Houlihan Lokey and/or to the DuPont board, the solvency opinion could not have been given, the DuPont board would have reached (and been required to have reached) a different conclusion about the appropriateness of the spin-off, and/or terms of the spin-off would have been changed in Chemours's favor.

107. If Chemours had unlimited responsibility for the true potential maximum liabilities, it would have been insolvent as of the time of the spin-off.

108. Since DuPont predicated its board's approval of the spin-off as appropriate and legal, and Chemours's solvency, on the liability maximums it certified, those maximums now must be given effect. The Separation Agreement should not be enforceable or interpreted in a way that would have rendered the spin-off contrary to Delaware law or public policy.

109. Chemours seeks a declaration that the Indemnification Provisions are not enforceable by Defendants (and thus should be suspended or modified) or do not apply in excess of the already-exceeded $2.09 million liability maximum for Fayetteville Works, such that Defendants may not obtain indemnification from Chemours as to Fayetteville-related liability and Chemours may seek contribution, indemnification or other reimbursement from Defendants for amounts Chemours has paid or pays above that maximum for Fayetteville-related liability. Chemours also seeks similar declarations as to the liability maximums for the New Jersey sites, benzene and PFAS to the extent they are exceeded.

110. The existing controversy regarding the enforceability and interpretation of the Separation Agreement is substantial, justiciable and of sufficient immediacy to warrant the issuance of a declaratory judgment. The judgment will terminate the controversy and remove an uncertainty regarding the enforceability and interpretation of the Separation Agreement. Chemours has no adequate remedy at law.

COUNT TWO

(Declaratory Judgment – Based on the Dividend)

111. Chemours repeats and incorporates by reference the allegations above.

112. In May 2015, Chemours was a wholly owned subsidiary of DuPont. At that time, as part of the spin-off, DuPont caused Chemours to pay a $3.91 billion dividend by Chemours directly to and for the benefit of DuPont.

113. The legality of this dividend to DuPont was conditioned on the Houlihan Lokey solvency opinion. The Houlihan Lokey opinion, in turn, was expressly predicated on the liability maximums certified by DuPont.

114. The liability maximums were not the product of a reasonable inquiry into or a reasonable evaluation by DuPont of the liabilities transferred to Chemours. To the contrary, DuPont's management made an unreasonable inquiry, designed to understate or predictably causing understatement of the maximum liabilities. DuPont had knowledge of, or a reasonable inquiry would have turned up, facts indicating that the maximum potential liabilities were significantly higher than the certified maximums.

115. If DuPont had disclosed the true maximum potential liabilities and its current position that Chemours would have unlimited responsibility for them, it and Houlihan Lokey would have arrived at a valuation of Chemours's total

liabilities that rendered the $3.91 billion dividend unlawful under 8 *Del. C.* §§ 170, 173, 174. The Indemnification Provisions should be deemed unenforceable or interpreted so as to avoid this result.

116. Accordingly, Chemours seeks a declaration that the Indemnification Provisions are not enforceable by Defendants (and thus should be suspended or modified) or do not apply in excess of the already-exceeded $2.09 million liability maximum for Fayetteville Works, such that Defendants may not obtain indemnification from Chemours as to Fayetteville-related liability and Chemours may seek contribution, indemnification or other reimbursement from Defendants for amounts Chemours has paid or pays above that maximum for Fayetteville-related liability. Chemours also seeks similar declarations as to the liability maximums for the New Jersey sites, benzene and PFAS to the extent they are exceeded.

117. The existing controversy regarding the enforceability and interpretation of the Separation Agreement is substantial, justiciable and of sufficient immediacy to warrant the issuance of a declaratory judgment. The judgment will terminate the controversy and remove an uncertainty regarding the enforceability and interpretation of the Separation Agreement. Chemours has no adequate remedy at law.

COUNT THREE

(Declaratory Judgment — Based on Public Policy)

118. Chemours repeats and incorporates by reference the allegations above.

119. Under Delaware law and public policy, indemnification provisions are not enforceable or interpreted in a way that would produce inequity.

120. The terms of DuPont's spin-off of Chemours, including the $3.91 billion dividend payment to DuPont, were predicated on the Houlihan Lokey opinion. The Houlihan Lokey opinion, in turn, was expressly predicated on the liability maximums certified by DuPont.

121. The liability maximums were not the product of a reasonable inquiry into or a reasonable evaluation by DuPont of the liabilities transferred to Chemours. To the contrary, DuPont's management made an unreasonable inquiry, designed to understate or predictably causing understatement of the maximum liabilities. DuPont had knowledge of, or a reasonable inquiry would have turned up, facts indicating that the maximum potential liabilities were significantly higher than the certified maximums.

122. If DuPont had disclosed the true maximum potential liabilities and its current position that Chemours would have unlimited responsibility for them to

Houlihan Lokey and/or to the DuPont board, the terms of the spin-off would have been changed (and been legally required to have changed) in Chemours's favor.

123. If Chemours had unlimited responsibility for the true potential maximum liabilities, it would have been insolvent as of the time of the spin-off.

124. Accordingly, as a matter of Delaware law and public policy, the liability maximums DuPont certified must be given effect and the Indemnification Provisions should be deemed unenforceable or interpreted so as to avoid inequity. Chemours seeks a declaration that the Indemnification Provisions are not enforceable by Defendants (and thus should be suspended or modified) or do not apply in excess of the already-exceeded $2.09 million liability maximum for Fayetteville Works, such that Defendants may not obtain indemnification from Chemours as to Fayetteville-related liability and Chemours may seek contribution, indemnification or other reimbursement from Defendants for amounts Chemours has paid or pays above that maximum for Fayetteville-related liability. Chemours also seeks similar declarations as to the liability maximums for the New Jersey sites, benzene and PFAS to the extent they are exceeded.

125. The existing controversy regarding the enforceability and interpretation of the Separation Agreement is substantial, justiciable and of sufficient immediacy to warrant the issuance of a declaratory judgment. The

judgment will terminate the controversy and remove an uncertainty regarding the enforceability and interpretation of the Separation Agreement. Chemours has no adequate remedy at law.

COUNT FOUR

(Declaratory Judgment — Based on Unconscionability)

126. Chemours repeats and incorporates by reference the allegations above.

127. As alleged above, the Separation Agreement was the product of a one-sided process that lacked any of the hallmarks of arm's-length bargaining. DuPont unilaterally dictated the terms of the Separation Agreement and imposed them on Chemours. For these reasons, the process by which the Separation Agreement was prepared and executed was procedurally unconscionable.

128. The procedural unconscionability of the Separation Agreement gave rise to substantive unconscionability. If Chemours has unlimited responsibility for the true potential maximum liabilities, the spin-off and Separation Agreement will have caused Chemours to pay amounts, take on debt, assume liabilities and be subject to Indemnification Provisions that shock the conscience due to their extreme imbalance towards DuPont's interests.

129. Accordingly, and to remedy the unconscionability, Chemours seeks a declaration that the Indemnification Provisions are not enforceable by Defendants

(and thus should be suspended or modified) or do not apply in excess of the already-exceeded $2.09 million liability maximum for Fayetteville Works, such that Defendants may not obtain indemnification from Chemours as to Fayetteville-related liability and Chemours may seek contribution, indemnification or other reimbursement from Defendants for amounts Chemours has paid or pays above that maximum for Fayetteville-related liability. Chemours also seeks similar declarations as to the liability maximums for the New Jersey sites, benzene and PFAS to the extent they are exceeded.

130. The existing controversy regarding the enforceability and interpretation of the Separation Agreement is substantial, justiciable and of sufficient immediacy to warrant the issuance of a declaratory judgment. The judgment will terminate the controversy and remove an uncertainty regarding the enforceability and interpretation of the Separation Agreement. Chemours has no adequate remedy at law.

COUNT FIVE

(Declaratory Judgment — Based on Section 10.20)

131. Chemours repeats and incorporates by reference the allegations above.

132. Section 10.20 of the Separation Agreement provides: "Nothing in this Agreement is intended to confer to or impose upon any Party a duplicative right,

entitlement, obligation or recovery with respect to any matter arising out of the same facts and circumstances (including with respect to the rights, entitlements, obligations and recoveries that may arise out of one or more of the following Sections: Section 6.2; Section 6.3; and Section 6.4)."

133. The Separation Agreement conferred upon DuPont an entitlement to a $3.91 billion dividend from Chemours (consisting of a Debt-for-Debt Exchange and a Chemours Financing Cash Distribution, as defined in the Separation Agreement). Separation Agreement § 2.2(d).

134. The $3.91 billion dividend paid by Chemours was premised on and incorporated the liability maximums certified by DuPont. That dividend was increased to the extent DuPont's certifications understated the maximum liability from those sources.

135. If DuPont were to receive the benefit of the Indemnification Provisions above the liability maximums, it would receive a duplicative recovery arising out of the same facts and circumstances.

136. Accordingly, Chemours seeks a declaration that, pursuant to Separation Agreement § 10.20, the Indemnification Provisions are not enforceable by Defendants (and thus should be suspended or modified) or do not apply in excess of the already-exceeded $2.09 million liability maximum for Fayetteville

Works, such that Defendants may not obtain indemnification from Chemours as to Fayetteville-related liability and Chemours may seek contribution, indemnification or other reimbursement from Defendants for amounts Chemours has paid or pays above that maximum for Fayetteville-related liability. Chemours also seeks similar declarations as to the liability maximums for the New Jersey sites, benzene and PFAS to the extent they are exceeded.

137. The existing controversy regarding the enforceability and interpretation of the Separation Agreement is substantial, justiciable and of sufficient immediacy to warrant the issuance of a declaratory judgment. The judgment will terminate the controversy and remove an uncertainty regarding the enforceability and interpretation of the Separation Agreement. Chemours has no adequate remedy at law.

COUNT SIX

(Declaratory Judgment — Based on Interpretation of Unilateral Contract)

138. Chemours repeats and incorporates by reference the allegations above.

139. The Separation Agreement was predicated by DuPont and approved as "appropriate" by DuPont's board on the basis of the liability maximums that DuPont certified.

140. As a matter of interpretation under Delaware law of an "agreement" that was unilaterally drafted by one "party" and crammed down on the other, the agreement should be read as incorporating those maximums as limits on DuPont's rights under the Indemnification Provisions.

141. This is particularly the case where DuPont elided a main legal constraint on its unilateral action — the Delaware law requirement that its board approve the Agreement as appropriate and legal, and that the Agreement not create an insolvent entity — on the basis of the certified liability maximums.

142. Accordingly, Chemours seeks a declaration that Defendants' rights under the Indemnification Provisions do not apply in excess of the already-exceeded $2.09 million liability maximum for Fayetteville Works, such that Defendants may not obtain indemnification from Chemours as to Fayetteville-related liability and Chemours may seek contribution, indemnification or other reimbursement from Defendants for amounts Chemours has paid or pays above that maximum for Fayetteville-related liability. Chemours also seeks similar declarations as to the liability maximums for the New Jersey sites, benzene and PFAS to the extent they are exceeded.

143. The existing controversy regarding the interpretation of the Separation Agreement is substantial, justiciable and of sufficient immediacy to warrant the

issuance of a declaratory judgment. The judgment will terminate the controversy and remove an uncertainty regarding the interpretation of the Separation Agreement. Chemours has no adequate remedy at law.

COUNT SEVEN

(Unlawful Dividend (8 *Del. C.* §§ 170, 173 & 174))

144. Chemours repeats and incorporates by reference the allegations above.

145. In May 2015, Chemours was a wholly owned subsidiary of DuPont. At that time, Chemours's board consisted of DuPont employees Michael Heffernan, Nigel Pond and Steven Zelac.

146. On or about May 12, 2015, as part of the spin-off, DuPont caused the Chemours board to approve and Chemours to pay a $3.91 billion dividend directly to and for the benefit of DuPont.

147. The legality of this dividend to DuPont was conditioned on the Houlihan Lokey solvency opinion. The Houlihan Lokey opinion, in turn, was expressly predicated on the liability maximums certified by DuPont.

148. The liability maximums were not the product of a reasonable inquiry into or a reasonable evaluation by DuPont of the liabilities transferred to Chemours. To the contrary, DuPont's management made an unreasonable inquiry, designed to understate or predictably causing understatement of the maximum

liabilities. DuPont had knowledge of, or a reasonable inquiry would have turned up, facts indicating that the maximum potential liabilities were significantly higher than the certified maximums. For that reason, the Houlihan Lokey opinion was not reliable.

149. If DuPont had disclosed the true maximum potential liabilities and its current position that Chemours would have unlimited responsibility for them, it, Houlihan Lokey and/or the DuPont employees who comprised the Chemours board would have arrived at a valuation of Chemours's total liabilities that rendered the $3.91 billion dividend unlawful under 8 *Del. C.* §§ 170, 173, 174. In fact, if Chemours had unlimited responsibility for the true potential maximum liabilities, it would have been insolvent as of the time.

150. Accordingly, if this Court determines Defendants' current position that Chemours has unlimited responsibility for the true maximum potential liabilities is correct, then as an alternative to the declarations described above Chemours is entitled to the return of the $3.91 billion dividend.

COUNT EIGHT

(Unjust Enrichment)

151. Chemours repeats and incorporates by reference the allegations above.

152. In May 2015, Chemours was a wholly owned subsidiary of DuPont. At that time, Chemours's board consisted of DuPont employees Michael Heffernan, Nigel Pond and Steven Zelac.

153. On or about May 12, 2015, as part of the spin-off, DuPont caused the Chemours board to approve and Chemours to pay a $3.91 billion dividend directly to and for the benefit of DuPont.

154. The legality of this dividend to DuPont was conditioned on the Houlihan Lokey solvency opinion. The Houlihan Lokey opinion, in turn, was expressly predicated on the liability maximums certified by DuPont.

155. The liability maximums were not the product of a reasonable inquiry into or a reasonable evaluation of the liabilities transferred to Chemours. To the contrary, DuPont's management made an unreasonable inquiry, designed to understate or predictably causing understatement of the maximum liabilities. DuPont had knowledge of, or a reasonable inquiry would have turned up, facts indicating that the maximum potential liabilities were significantly higher than the certified maximums. For that reason, the Houlihan Lokey opinion was not reliable.

156. If DuPont had disclosed the true maximum potential liabilities and its current position that Chemours would have unlimited responsibility for them, it, Houlihan Lokey and/or the DuPont employees who comprised the Chemours board would have arrived at a valuation of Chemours's total liabilities that would have required the reduction of the $3.91 billion dividend. In fact, if Chemours had unlimited responsibility for the true potential maximum liabilities, it would have been insolvent as of the time. Under such circumstances, the $3.91 billion dividend would not have been justified, would not have been approved by a board acting consistently with its duties, would have been unfair and inconsistent with ordinary practice and would have unjustly enriched DuPont and the other Defendants.

157. Accordingly, if this Court determines Defendants' current position that Chemours has unlimited responsibility for the true maximum potential liabilities is correct, then as an alternative to the declarations described above Chemours is entitled to the return of the $3.91 billion dividend to cure the unjust enrichment. Chemours has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Chemours requests that this Court enter a judgment:

A. declaring that the Indemnification Provisions are not enforceable by Defendants (and thus should be suspended or modified) and do not apply in excess of the $2.09 million liability maximum for Fayetteville Works;

B. declaring that, because Chemours has already paid over $2.09 million in connection with Fayetteville Works-related liability, Defendants may not obtain indemnification from Chemours as to Fayetteville Works-related liability;

C. declaring that, notwithstanding the Indemnification Provisions, Chemours may seek contribution, indemnification or other reimbursement from Defendants for amounts Chemours has paid or pays above that maximum for Fayetteville Works-related liability;

D. declaring that, if the liability maximums for the New Jersey sites and benzene (and any other liability category) are exceeded, the applicable liability maximum will limit Chemours's indemnification obligations to Defendants and Chemours may seek contribution, indemnification

or other reimbursement from Defendants for amounts Chemours pays above that maximum;

E. in the alternative, ordering the return of all or a portion of Chemours's \$3.91 billion dividend to DuPont, in an amount to be determined at trial; and

F. for such other, further and different relief as the Court may deem just and proper.

FRIEDLANDER & GORRIS P.A.

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